

PENACHIO MALARA LLP
Counsel for the Debtor
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**HEARING DATE & TIME:
AUGUST 19, 2020 AT 10:00 AM**

Anne Penachio, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

In re:

CHAPTER 13

JOSE C. HERNANDEZ,

Case No.: 18-23055 (SHL)

Debtor.

----- X

**NOTICE OF HEARING ON THE DEBTOR'S AMENDED APPLICATION FOR AN
ORDER MODIFYING HIS CONFIRMED CHAPTER 13 PLAN TO EXTEND
PAYMENT TERM UNDER THE CARES ACT AND APPROVING
COMPENSATION IN THE AMOUNT OF \$1,250.00**

PLEASE TAKE NOTICE that a hearing on the amended application of **JOSE C. HERNANDEZ**, the above-referenced debtor (the "Debtor"), for an order modifying the Debtor's confirmed Chapter 13 plan to extend payment term under the CARES Act and approving compensation in the amount of \$1,250.00 will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, in his Courtroom, at 300 Quarropas Street, White Plains, New York, 10601 at 10:00 AM on August 19, 2020.

PLEASE TAKE FURTHER NOTICE that a copy of the application is available on the Bankruptcy Court's website, www.nysb.uscourts.gov or from the undersigned on request.

PLEASE TAKE FURTHER NOTICE that the hearing may be conducted telephonically. Please refer to the Bankruptcy Court's website, www.nysb.uscourts.gov or contact the undersigned for information and guidance.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief sought in the application must comply with applicable law and be served upon the undersigned with a copy to the Bankruptcy Judge's Chambers at least seven (7) days prior to the return date. Unless objections are interposed, the relief sought in the application may be granted.

Dated: White Plains, New York
June 17, 2020

RESPECTFULLY SUBMITTED,

By: PENACHIO MALARA LLP
/s/ Anne Penachio
Anne Penachio, Esq.
Counsel for Debtor
245 Main Street, Suite 450
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Telephone: (914) 946-2889

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In re:

CHAPTER 13

JOSE C. HERNANDEZ,

Case No.: 18-23055 (SHL)

Debtor.

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**THE DEBTOR'S AMENDED APPLICATION FOR AN ORDER MODIFYING HIS
CONFIRMED CHAPTER 13 PLAN TO EXTEND PAYMENT TERM UNDER THE
CARES ACT AND APPROVING COMPENSATION IN THE AMOUNT OF \$1,250.00**

**TO: THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE**

The application of **JOSE C. HERNANDEZ**, the above-referenced debtor (the "Debtor"), through his counsel, **PENACHIO MALARA LLP**, for approval of modification of his Chapter 13 plan to extend the commitment period pursuant to the CARES ACT dated March 27, 2020 as amended, respectfully sets forth and alleges as follows:

I. DEBTOR'S BANKRUPTCY BACKGROUND

1. On July 10, 2018, the Debtor filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code, as amended (the "Bankruptcy Code") with the Clerk of this Court. The case was referred to the Bankruptcy Judge herein.

2. The Debtor is employed as a sales representative. His wife is employed as a health care worker. They have 3 children who are approximately 10, 8 and 6 years of age.

3. The Debtor's financial reverses were precipitated by a combination of factors including (i) setbacks in the economy; (ii) job loss; (iii) increased costs including utilities and interest rates on his mortgage as well as repairs to the home; and (iv) a failed business venture.

4. The Debtor's primary asset is his residence, a single family home at 681 N. Broadway, Yonkers, NY 10701 (the "Home"). During this case, after a protracted and at times contentious Loss Mitigation process, the Debtor received a loan modification from Planet Home Funding. Upon information and belief, he is substantially current with the payments.

5. The Debtor's Chapter 13 plan, as amended, was confirmed on or about November 22, 2019 (the "Plan"). It requires the Debtor to make payments of \$375.00 for 12 months and \$250.00 for 48 months.

6. The Plan provides for a 100% distribution to creditors. The Debtor's obligations, other than Planet Home Funding, are limited. Unsecured claims total only \$6,313.71. A copy of the Worksheet is annexed hereto as Exhibit A. (Note: Counsel voluntarily reduced its fee for Loss Mitigation due so that it could be a 100% plan).

7. At a hearing on or about June 11, 2020, the Trustee indicated that he was 1½ payments behind. The Debtor maintains that he is current. However, he also indicated that he is struggling due primarily from financial hardship caused by the COVID-19 pandemic. His salary as a sales representative for an electrical supply company has decreased. His children have not been able to attend school requiring his supervision. A supporting affirmation from the Debtor explaining his difficulties is annexed hereto as Exhibit B. A copy of the proposed amended plan is annexed hereto as Exhibit C. It will be filed and served (the "Second Amended Plan").

8. Like the Plan, the Debtor's Second Amended Plan provides for payment in full to creditors who, with Trustee's commission, are due slightly less than \$16,500.00. The proposed payments are as follows:

<u>Amount</u>	<u>Number of Months</u>	<u>Period</u>	<u>Total</u>
\$375.00	12	8/10/18- 7/10/19	\$4,500.00
\$250.00	7	8/10/19-2/10/20	\$1,750.00
\$180.00	65	3/10/20-7/10/25	\$11,700.00
TOTAL			\$17,950.00

THE AMENDED PLAN SHOULD BE CONFIRMED

9. It is submitted that the proposed modified terms are fair and reasonable.

10. The CARES Act permits a Chapter 13 debtor whose plan was confirmed as of the date of enactment of the CARES Act (March 27, 2020) to seek modifications of their plan due to COVID-19-related hardships. Specifically, the CARES Act adds subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan, after notice and a hearing, if such debtor is experiencing a “material financial hardship” due, “directly or indirectly,” to the COVID-19 pandemic.

11. 11 U.S.C. § 1329(d)(1) provides in pertinent part as follows:

“(d) (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—

“(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic; and

“(B) the modification is approved after notice and a hearing.

“(2) A plan modified under paragraph (1) may not provide for payments over a period

that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

12. In this case, the Debtor is has faced financial hardship, as detailed in his affirmation to be filed and served herewith. Although the proposed reduction in monthly payments from \$250.00 to \$180.00 per month is fairly small (\$70.00 per month), it will ease the financial pressure on the Debtor.

COMPENSATION

13. Counsel seeks a flat fee for time and expenses in the reduced amount of \$1,250.00 in connection with this application, conferring with the Debtor, and drafting amending and serving the Amended Plan.

14. Counsel estimates that she and support staff will send at least 4 hours on the matter (including (i) review of the CARES Act, (ii) conferences with Debtor and review of his financial situation; (iii) drafting of this application, the amended plan, worksheet and schedules, if needed; (iv) address any objections; and (v) preparation for and appearance at hearing. Counsel estimates that she will incur at least \$200.00 in expenses associated with service of Amended Plan and this motion and Court appearances.

15. Counsel seeks payment of fees under the Plan from the Trustee.

WHEREFORE, the Debtor respectfully requests that this Court: (i) approve the Amended Plan; (ii) approve the compensation sought and (iii) grant such other and further relief as may be just and proper.

Dated: White Plains, New York
June 17, 2020

PENACHIO MALARA, LLP

By: /s/ Anne Penachio

Anne Penachio
Counsel for the Debtor
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